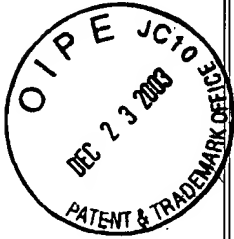


Image



1617

PATENT
Customer No. 22,852
Attorney Docket No. 07579.0006-01000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Graham Edmund KELLY)
) Group Art Unit: 1617
)
Serial No.: 09/986,509)
)
Filed: November 9, 2001) Examiner: Edward J. WEBMAN
)
For: TREATMENT OR PREVENTION OF)
MENOPAUSAL SYMPTOMS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

NOTICE REGARDING RELATED LITIGATION

Applicant hereby notifies the U.S. Patent and Trademark Office that a patent possibly related to the present application is involved in litigation. The present application, U.S. Serial No. 09/986,509, filed November 9, 2001, is a continuation of U.S. application Serial No. 09/077,590, filed as PCT/AU98/00313 on May 1, 1998, which entered the national stage on June 2, 1998. The patent that is involved in litigation is U.S. Patent No. 6,642,212 B1 ("the '212 patent"), issued from U.S. application Serial No. 09/421,069 on November 4, 2003, and was originally filed on October 19, 1999, as a continuation of U.S. application Serial No. 08/910,837, filed August 13, 1997, now U.S. Patent No. 6,562,380 B1. As is clear from the above, the present application and the patent in suit do not share a common specification or overlapping claims to priority although they do relate to isoflavones and are all assigned to Novogen Pty. Ltd. Nevertheless, to avoid even the appearance of impropriety, Applicant submits this notice in the event that the disclosures in the respective specifications would ever be considered related.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

STATUS OF RELATED LITIGATION

On November 4, 2003, Solae, L.L.C. ("Solae") filed a Complaint alleging that Archer Daniels Midland Company ("ADM") and Amerifit Nutrition, Inc. ("Amerifit") infringe at least one claim of the '212 patent. The case, Civil Case No. 4:03-CV-01595 RWS, was filed in U.S. District Court for the Eastern District of Missouri. The undersigned has been informed that Solae is the exclusive licensee of the '212 patent for products containing soy-derived isoflavones.

On November 21, 2003, ADM and Amerifit filed Defendants' Joint Motion to Consolidate. In their motion, Defendants requested consolidation of the Solae litigation described above, with a separate Solae litigation filed on June 2, 2003, also in the U.S. District Court for the Eastern District of Missouri, Civil Case No. 03-CV-732. The earlier case contends that the Defendants products infringe Solae's rights in U.S. Patent Nos. 5,990,291 (Reexamination Certificate 5,990,291 C1) ("the '291 patent")¹ and 6,562,380 ("the '380 patent"); the later case contends that the Defendants products infringe Solae's rights in the '212 patent, a continuation of the '380 patent. On September 11, 2003, the Applicant submitted a Notice Regarding Related Litigation to the Office in reference to the earlier litigation.

REMARKS

Further to this Notice Regarding Related Litigation, the Applicant submits a copy of the Complaint and a copy of the docket for Civil Case No. 4:03-CV-01595 RWS, current as of December 4, 2003.

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

¹ The '291 patent is entitled "Recovery of Isoflavones from Soy Molasses," names Doyle Waggle and Barbara Bryan as inventors and is assigned on its face to Protein Technologies International.

If there are any fees due with the filing of this Notice not already accounted for, please charge the fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 22, 2003

By: 

Deborah J. Acker
Reg. No. 48,916

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com